

Food Objectives Corp. a/k/a All Pro Vending and International Union, United Automobile Aerospace & Agricultural Implement Workers of America-UAW. Case 2-CA-29891

April 13, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN
AND BRAME

Upon a charge filed by International Union, United Automobile Aerospace & Agricultural Implement Workers of America-UAW (the Union), on November 25, 1996, the General Counsel of the National Labor Relations Board issued a complaint on July 28, 1997, against Food Objectives Corp. a/k/a All Pro Vending (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On September 22, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On September 25, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations of the motion are undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on the Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that by letter dated August 12, 1997, counsel for the General Counsel notified the Respondent that unless an answer was received by August 26, 1997, a motion for summary judgment would be filed. Nevertheless, the Respondent has failed to file an answer.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

Accordingly, based on the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent has been a corporation with an office and place of business at 1 Oak Road, Fairfield, New Jersey, that operates a food service and vending business, including providing cafeteria and vending machine services, at the General Motors North Tarrytown, New York facility. In the 12-month period preceding the issuance of the complaint, the Respondent, in conducting its business operation, derived gross revenue in excess of \$500,000 and performed services valued in excess of \$50,000 for enterprises directly engaged in interstate commerce, including, but not limited to, the General Motors Corporation. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

All employees of the Respondent, excluding confidential employees, managers, assistant managers, supervisors, bookkeepers, office employees, professional employees, foremen and all other supervisory employees with the authority to hire, promote, discharge, discipline or effectively recommend such action.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the employees in the unit and has been recognized as the representative by the Respondent. This recognition has been embodied in an agreement between the parties to comply with the terms and conditions of a 1995-1998 collective-bargaining agreement between the Union and Service Dynamics Corporation, the Respondent's predecessor.

On or about August 1, 1996, the Respondent terminated all business operations at the North Tarrytown facility without prior notice to the Union and without offering it an opportunity to bargain with the Respondent with respect to the effects of this conduct. By letter of August 7, 1996, the Union requested certain information from the Respondent relating to terms and conditions of employment of unit employees. The requested information is relevant to and necessary for the Union's performance of its duties as the exclusive col-

lective-bargaining representative of the unit employees. Since on or about August 7, 1996, the Respondent has failed and refused to furnish the Union with the information requested.

On or about August 8, 1996, the Union, by letter, requested that the Respondent bargain collectively and in good faith about the effects of the closure of the Respondent's operations at the North Tarrytown facility. Since about August 8, 1996, the Respondent has failed and refused to bargain collectively about this subject, which relates to the wages, hours, and other terms and conditions of employment of the unit employees and is a mandatory subject of bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the exclusive collective-bargaining representative of its employees within the meaning of Section 8(d), and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1) by failing to bargain with the Union, we shall order the Respondent, on request, to bargain with the Union about the effects of its decision to close its North Tarrytown operations. In addition, we shall accompany our bargaining order with a limited backpay requirement in the manner set forth in *Transmarine Navigation Corp.*, 170 NLRB 389 (1968). Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). We shall also order the Respondent to provide the Union with the information it requested.

In view of the fact that the Respondent's operations at North Tarrytown have closed, we shall order the Respondent to mail copies of the attached notice to the Union and to the last known addresses of its former employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relation Board orders that the Respondent, Food Objectives Corp. a/k/a All Pro Vending, Fairfield, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

- (a) Failing and refusing to bargain in good faith with International Union, United Automobile Aerospace & Agricultural Implement Workers of America-UAW as the exclusive representative of the employees in the bargaining unit set forth below, by refusing to bargain about the effects of its decision to close its North Tarrytown, New York operations and by refusing to provide information necessary for and relevant to bargaining.

All employees of the Respondent, excluding confidential employees, managers, assistant managers, supervisors, bookkeepers, office employees, professional employees, foremen and all other supervisory employees with the authority to hire, promote, discharge, discipline or effectively recommend such action.

- (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

- (a) On request, bargain with the Union about the effects on the unit employees of its decision to close its North Tarrytown, New York operations and reduce to writing any agreement reached as a result of such bargaining.

- (b) Pay the former employees in the unit described above their normal wages when last in the Respondent's employ from 5 days after the date of this decision until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects of its decision to close its North Tarrytown, New York operations; (2) the date a bona fide impasse in bargaining occurs; (3) the failure of the Union to request bargaining within 5 days of this decision, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to these employees exceed the amount they would have earned as wages from the date on which the Respondent terminated its operation, to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain in good faith, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings which the terminated employees would normally have received during the applicable period, less any net interim earnings, and shall be computed as set forth in the remedy portion of this decision.

(c) Provide the Union in a timely fashion the information requested by the Union in its letter dated August 7, 1996.

(d) Preserve, and within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay under this Order.

(e) Within 14 days after service by the Region, mail signed and dated copies of the attached notice marked "Appendix,"¹ to the Union and all unit employees. Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be mailed immediately upon receipt by the Respondent to the last known address of each employee.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail or refuse to bargain in good faith with International Union, United Automobile Aerospace & Implement Workers of America-UAW as the exclusive bargaining representative of the employees in the unit set forth below by refusing to bargain about the effects of our decision to close our North Tarrytown, New York operations:

All employees, excluding confidential employees, managers, assistant managers, supervisors, bookkeepers, office employees, professional employees, foremen and all other supervisory employees with the authority to hire, promote, discharge, discipline or effectively recommend such action.

WE WILL NOT refuse to provide the Union with requested information necessary for and relevant to collective bargaining.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union about the effects on the unit employees of our decision to close our North Tarrytown operations and reduce to writing any agreement reached as a result of such bargaining.

WE WILL provide the Union in a timely fashion the information requested by the Union in its letter dated August 7, 1996.

WE WILL pay the former employees in the unit described above their normal wages, with interest, for the period set forth in the decision of the National Labor Relations Board.

FOOD OBJECTIVES CORP. A/K/A ALL
PRO VENDING